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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/016,597

Filing Date: October 26, 2001

Appellant(s): HEISEY ET AL.

Richard A. Baker, Jr. (Reg. No. 48,124)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 22, 2006, appealing from the Office action mailed October 6, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect (there is no claim 38). A correct statement of the status of the claims is as follows:

This appeal involves claims 1-18.

Claims 19-37 stand rejected but are not appealed.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct (again, there is no claim 38). The changes are as follows:

Claims 1-17 stand rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.);

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Claim 18 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.) in view of U.S. Patent No. 6,549,943 to Spring.

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the appellant's brief.

Claim 19 is rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.);

Claims 20-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.) in view of U.S. Patent Application Publication No. 2001/0055017 (Ording).

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

| | | |
|--------------|-----------------|--------|
| 6,549,943 | SPRING | 4-2003 |
| 2003/0126195 | REYNOLDS et al. | 7-2003 |

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-17 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.).

As per claim 1, *Reynolds et al.* discloses:

control program code responsive to at least one user command for issuing a plurality of device commands including at least one device command to replace a code image in an embedded device (see, for example, paragraph [0508] (describing the administrator's interaction with the Available Release window); paragraph [0511] et seq. (describing the carrying out of the upgrade through the master SMS and SMS clients));

monitoring program code, asynchronous with respect to said control program code, for generating at least one event indication in response to a change of at least one predetermined attribute of said embedded device and forwarding said at least one event indication to said control program code (see, for example, paragraphs [0504] through [0507]; the availability of upgrades, along with the board specific upgrade instructions (paragraphs [0505] and [0506] (“[T]he master SMS opens . . . an upgrade instruction file . . . indicat[ing] the scope of the upgrade A board-by-board upgrade may allow a network device administrator to chose certain boards on which to upgrade applications and allow older versions of the same applications to continue running on other boards.”)) may be considered attributes of the embedded device; the master SMS detects (monitors) new releases (changes in the above attributes) (paragraphs [0504] through paragraphs [0506] (“When the master SMS detects a new release, it opens . . . the packaging list in the new sub-directory”)) and creates appropriate records in the SMS table and sends a trap (and event indication) to the NMS (paragraph [0508] (“The master SMS may then send a trap to the NMS or the NMS may periodically poll the SMS table to detect new records.”)); and

said at least one device command replacing said code image in response to said at least one event indication (see, for example, paragraph [0505] (“The upgrade instruction file

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indicates the scope of the upgrade (i.e., upgrade mode.”); paragraph [0508] (“[T]he NMS creates a new record 1230 (FIG. 21c) in an Available Release window 1232. . . . The administrator may select any entry in the Available Release window to cause an Image Control dialog box 1236 (FIG. 21e) to appear.”); paragraph [0510] (“If the user selects the board-by-board option or the path-by-path option, other dialog boxes will appear to accept the administrator’s input of which board(s) or path(s) to upgrade.”); paragraph [0511] (“Once the administrator has provided any required information in the Upgrade Control dialog box and, in the case of an upgrade, the Upgrade Mode dialog box, the NMS creates a new record 1251 in an Upgrade Control table 1248 (FIG. 21g).”); paragraph [0512] (“When the NMS adds new record 1251 to the Upgrade Control table, an active query is sent to the master SMS. If an upgrade command is detected in Command field 1252, the master SMS sends notices to all SMS clients that access software components from the current release subdirectory indicating that software components should now be accessed from the new release sub-directory.”)).

As per claim 2, *Reynolds et al.* further discloses the control program code and the monitoring program code being independent threads of execution (see, for example, paragraph [0503]).

As per claim 3, *Reynolds et al.* further discloses an embedded device abstraction software object that generates at least one event to said monitoring program code in response to information obtained from said embedded device (see, for example, paragraph [0508]).

As per claim 4, *Reynolds et al.* further discloses the embedded device abstraction software object generating at least one event to said control program code in response to information obtained from said embedded device (see, for example, paragraph [0508]).

As per claim 5, *Reynolds et al.* further discloses said information obtained from said embedded device including at least one value from a Management Information Base (MIB) stored on said embedded device (see, for example, paragraph [0119]).

As per claim 6, *Reynolds et al.* further discloses said embedded device abstraction software object further operating to receive said at least one command from said control program code, and, in response, send at least one corresponding query to said embedded device (see, for example, paragraph [0512]).

As per claim 7, *Reynolds et al.* further discloses said monitoring program code operating to periodically check the state of at least one attribute of said embedded device (see, for example, paragraph [0521]).

As per claim 8, *Reynolds et al.* further discloses said monitoring program code operating to periodically check the state of at least one attribute of said embedded device by sending at least one command to said embedded device abstraction software object (see, for example, paragraph [0521]).

As per claim 9, *Reynolds et al.* further discloses a state machine represented in program code accessible to said control program code (see, for example, paragraphs [0734] through [0737]).

As per claims 10-17, these are method versions of the claimed system discussed above (claims 1 and 3-9), wherein all limitations have been addressed as set forth above.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0126195 (Reynolds et al.) in view of U.S. Patent No. 6,549,943 to Spring.

As per claim 18, this is a computer program product version of the claimed system discussed above (claim 1). Although *Reynolds et al.* discloses such functionality (see the disclosure applied above to claim 1) but fails to expressly disclose the use of such a computer program product for implemented the prescribed system functionality, the use of such products is well known. For example, *Spring* teaches the use of such a product in a system for network management using abstract device descriptions (see, for example, col. 64, line 52, through col. 66, line 27). Therefore, it would have been obvious to one of ordinary skill in the computer art at the time the invention was made to include such a computer program product as a well known and established means of storing and transporting computer program data for a computer-implemented method.

(10) Response to Argument

Appellant argues that the language of each of independent claims 1, 10, and 18 “clearly indicates that the change is occurring in the embedded device.” (Brief at 12.) The examiner disagrees. The language, “of said embedded device,” (Claims 1, 10, and 18 (emphasis added),) is broader than appellant suggests and instead reasonably encompasses attributes either inside or outside of the embedded device. Further, appellant has not provided any evidence to support the assertion that an attribute “of said embedded device” cannot be reasonably interpreted as data associated with the embedded device. (Brief at 12.) The examiner notes that neither the term “attribute” nor the phrase “of said embedded device” are explicitly defined in the original

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disclosure or the claims in any manner that precludes the above interpretation (data associated with the embedded device). In fact, the appellant's specification uses the phrase "associated with the embedded device" when describing the attribute. (Specification at p. 4, lines 6-7 (emphasis added).)

Appellant further argues that the files of Reynolds are not "predetermined." (Brief at 12.) The examiner disagrees. Reynolds discloses periodically polling (through master SMS 184) installation directory 1222 for new directories that include new releases (see paragraph [0504]). These new releases represent available software upgrades for embedded devices (see, e.g., paragraph [0505] ("A board-by-board upgrade may allow a network device administrator to chose certain boards on which to upgrade applications . . .")), and as such, may be considered attributes of the embedded devices (i.e, data associated with the embedded devices) availability of such new software releases for embedded devices. Because the polling routine is preprogrammed to look for these new directories/releases (see paragraph [0504] ("Master SMS 184 periodically polls installation directory 1222 for new sub-directories including new releases, for example, release 1.1 1218 in sub-directory 1220.")), the availability of such new releases may be considered predetermined attributes, and the repeated polling of the installation directory (see paragraph [0504]) may be considered checking for changes in these predetermined attributes.

Regarding claim 18, appellant merely argues that Reynolds does not teach the "at least one event indication in response to a change of at least one predetermined attribute of said embedded device" element of claim 18. (Brief at 13.) However, as discussed above, Reynolds does teach such an element.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Eric B. Kiss

Patent Examiner, Art Unit 2192

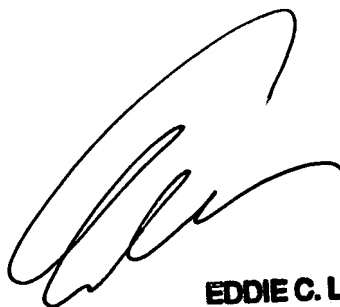
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